

COURT OF APPEALS  
DIVISION TWO

B R A M M E R, Judge.

¶1 Appellants John and Theresa Buchanan appeal the trial court’s entry of a stipulated judgment in favor of appellee Pinal County. We affirm.

### **Factual and Procedural Background**

¶2 In November 2004, Pinal County cited the Buchanans for violating Article 34, § 3401 of the Pinal County Zoning Ordinance by storing commercial vehicles, inoperable or unlicensed vehicles, and scrap objects on their property. A hearing officer found the Buchanans responsible for the violations and fined them \$400, plus additional daily fines if they remained in violation of the ordinance after thirty days. On appeal, the Pinal County Board of Supervisors (PCBS) affirmed the administrative order. On August 11, 2005, after finding the Buchanans had not abated the violations, a hearing officer assessed an additional \$300 fine, plus additional daily fines if, after thirty additional days, they remained noncompliant. The Buchanans again appealed to PCBS, which again affirmed the administrative order, but granted the Buchanans 120 days to abate the violation.

¶3 On November 29, 2005, the Buchanans appealed PCBS’s decision to the Pinal County Superior Court and simultaneously filed a complaint against Pinal County, PCBS, and the Pinal County Director of Planning and Development (collectively referred to as the County), alleging they had “deprived the Buchanans of their due process right[s].” The County filed a counterclaim, alleging the Buchanans were in violation of § 3401 of Article 34, had failed to pay \$48,000 in accrued fines, and requesting temporary and permanent injunctions against them. On November 15, 2006, less than a month before trial was to begin, the parties resolved all claims, entering into a settlement agreement.

¶4 The settlement agreement provided that the Buchanans would withdraw their appeal and claims, waive their defenses to the County’s counterclaim, abate the violation of § 3401 within 105 days, and pay the county \$900. In exchange, the County agreed to withdraw its counterclaim against the Buchanans. The agreement further provided that, if the Buchanans “breach[ed] any material term of th[e] Agreement, as determined by Pinal County,” they would be subject to a stipulated judgment consisting of an abatement order, fines, and a permanent injunction.

¶5 At a review hearing on March 5, 2007,<sup>1</sup> the County asserted that the Buchanans had failed to comply with the settlement agreement and requested that the trial court enter the stipulated judgment. The Buchanans admitted that they were “not a hundred percent in compliance,” but asserted they had made “a tremendous effort” and asked the court to use its “powers of equity” to stay the judgment for another ninety days. The court found the Buchanans had failed to abate the violation and, pursuant to the terms of the settlement agreement, entered the stipulated judgment against them. This appeal followed.

### **Discussion**

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<sup>1</sup>The Buchanans have not provided this court with a certified transcript of the March 5 review hearing as required by Rule 11(b), Ariz. R. Civ. App. P. Although they have attached to their opening brief what is purportedly a transcript of the proceedings, this method of creating the record on appeal does not comply with our rules. *See In re Prop. at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d 843, 846-47 (App. 2003). However, because the County does not assert the attached transcript is inaccurate, but rather relies on the same in its answering brief, we will consider it.

¶6 On appeal, the Buchanans argue the November 15 settlement agreement is illusory and, therefore, unenforceable because it gives the County sole authority to decide whether the Buchanans had complied with the agreement's terms. They also contend the applicable Pinal County zoning ordinance is unconstitutionally overbroad. Lastly, the Buchanans argue that much of their property is "exempt from the judgement . . . pursuant to A.R.S. § 33-1128." The Buchanans, however, raised none of these arguments in the trial court. They, therefore, have waived these arguments and we do not address them. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13, 13 P.3d 763, 768 (App. 2000) (court of appeals generally does not address issues raised for first time on appeal).

¶7 The Buchanans also argue their trial attorney, at the March 5 review hearing, entered into without their consent a supplemental settlement agreement on their behalf with the County that included acquiescing to the entry of judgment against them. They ask us to vacate that judgment. We note initially that this argument appears to be based on a misapprehension of fact. The Buchanans' trial counsel did not agree to the entry of judgment against them. Rather, he accepted the County's offer to delay seeking a writ to execute that judgment. The trial court explicitly found the Buchanans were not in compliance with the November 15 settlement agreement.<sup>2</sup> In any event, the Buchanans did not seek relief in the trial court from the judgment on this ground. Accordingly, there is

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<sup>2</sup>The Buchanans state in their recitation of the facts that "[t]he trial court . . . failed to exercise its equity powers and failed to make a proper factual determination of substantial compliance versus material breach." They do not, however, argue we should reverse the trial court's ruling on this basis.

nothing for us to review. *Cf. U.S. Fid. & Guar. Co. v. Heflin Steel Supply Co.*, 17 Ariz. App. 336, 337, 497 P.2d 843, 844 (1972) (dismissing appeal of default judgment where defendant did not file motion to set aside judgment).

¶8 We affirm the trial court's judgment in favor of Pinal County.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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JOHN PELANDER, Chief Judge